U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9920114

Date: AUG. 19, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a postdoctoral researcher in the field of biomedical science, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which he must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement

(that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner indicates employment as a senior postdoctoral fellow in the field of biomedical science at [redacted] University School of Medicine's [redacted] Louisiana.[1] Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The Petitioner's documentary evidence indicates that he has peer-reviewed manuscripts for several journals including *PLoS ONE* and *Bioscience Reports*. In addition, the record contains evidence that the Petitioner has authored scholarly articles published in journals including the *Journal of Applied Microbiology*, *Journal of Cancer Research and Clinical Oncology*, *American Journal of Physiology*, *Circulation: Cardiovascular Genetics*, and *Cell Cycle*. Accordingly, we agree with the Director that the Petitioner fulfilled the requirements of the judging and scholarly articles criteria.

On appeal, the Petitioner asserts that he meets the requirements of the criterion relating to original contributions of major significance in his field, discussed below. After reviewing all the evidence in the record, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field.[2] For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

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[1] *See* the Petitioner's curriculum vitae and employment verification letter submitted at initial filing.

[2] *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 8-9 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html (stating that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

As a preliminary matter, we will address the Petitioner's claim that the Director's decision "imputed additional regulations throughout these proceedings that are not contained anywhere in the [Act or the regulations]." The Petitioner, however, does not cite to specific examples in the Director's decision where he "imputed additional regulations." Instead, the Petitioner cites generally to *Kazarian* and *Gulen v. Chertoff*, 2008 WL 2779001 (E.D. Pa. 2008) in arguing that the Director unilaterally imposed novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5(h)(3). In contrast to those decisions, the Director did not improperly require, as in *Kazarian*, that university dissertations reviewed by the Petitioner be from a university with which he was not affiliated to satisfy the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv), or evidence that other scholars had cited to his publications to meet the regulation at 8 C.F.R. § 204.5(h)(3)(vi). Nor did the Director improperly determine, as in *Gulen*, that the Petitioner's publications were not scholarly and did not satisfy the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) based solely on their intended audience.[3] Rather, the Director's decision concluded that the Petitioner's evidence satisfied the regulatory requirements of both those criteria. The Petitioner's reference to the *Kazarian* and *Gulen* decisions is therefore not persuasive.

The Petitioner provided evidence reflecting the originality of his research through recommendation letters praising him for his contributions, as discussed below. Here, the authors do not provide specific examples of contributions that are indicative of major significance. In general, the letters recount the Petitioner's research and findings, indicate their publication in journals, and point to the citation of his work by others. Although they reflect the novelty of the projects on which he worked, they do not show how his research and findings have been considered of such importance and how their impact on the field rises to the level required by this criterion.

The Petitioner provided several expert opinion letters that address his research, including one from [redacted], a professor of biomedical informatics at the University [redacted] School of Medicine, who states that the Petitioner is "an outstanding scientist with impressive achievements in the field of molecular biology associated with [redacted]" specifically, in understanding the role of [redacted] genes in the development of [redacted] He provides that genetic variation in [redacted] has been reported to be associated with [redacted] regulation and [redacted] disease, and that the Petitioner has worked on resequencing the [redacted] gene for identification of novel variants that may have clinical implication of [redacted] and [redacted] disease. He asserts that the Petitioner has gained "international recognition" for his original research on the [redacted]s in American, African American, and Han Chinese American healthy subjects. He states that the Petitioner's 2013 article in *Circulation: Cardiovascular Genetics*, showing that [redacted] polymorphisms [redacted] were novel, advanced the field's understanding of these genetic variants in the clinical implication of [redacted] and [redacted] disease risk, and he notes that he cited the Petitioner's findings in his own article in *Genome Biology*.

[3] Further, in contrast to the broad precedential authority of the case law of a United States circuit court (such as with *Kazarian*), we are not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.

[redacted] a pharmacology professor who worked with the Petitioner at the [redacted] laboratory, states that the Petitioner's research "defined for the first time genetic variation in the [redacted] in 3 ethnic populations by resequencing [redacted]." He asserts that the results of the Petitioner's resequencing and functional genomic studies "greatly improved our understanding of the clinical implications of these genetic variants in [redacted] disease risk and the effect of drugs that mediate their effect via the [redacted] system." Regarding the examination of the relationship between [redacted] and [redacted] failure published in the Petitioner's 2016 *Cell Cycle* article, [redacted] states that in demonstrating "that [redacted] protect[redacted] from [redacted] via inhibition of both cytosolic [redacted] [the Petitioner's] findings lead to new drugs for treating [redacted] failure in a more efficient and effective way." He does not indicate, however, that new drugs or other therapies for treating heart failure have been designed or developed based on the Petitioner's research.

[redacted], a molecular biologist at [redacted], Spain, states that the Petitioner has made "extraordinary contributions to the study of the [redacted]." He provides that the Petitioner "found that the [redacted] is active against the Gram-negative plant pathogen [redacted], which causes bacterial blight, the most destructive bacterial disease [redacted]." He states that the findings published in the Petitioner's 2001 *Journal of Applied Microbiology* article "open a new research field of the genetic engineering of resistance to bacterial blight [redacted] and for the design of new [redacted] biocontrol agents." He indicates that he cited to Petitioner's work in his 2011 *FEMS Microbiology Review* article.

The Petitioner also submitted a letter from [redacted] his colleague at [redacted] University. Noting that individuals with a [redacted] infection, [redacted] states that the Petitioner's recent work has demonstrated that the gene editing technology CRISPR/Cas9 can efficiently mediate the editing of the [redacted] resulting in knockout of [redacted], and "paves the way to treat [redacted] infected patients with [redacted] knockout MSCs." He also asserts that the Petitioner "made remarkable achievements in establishing a novel model for structure and function analysis of the [redacted] gene . . . thereby facilitating development and validation of new drugs targeting [redacted] mutations."

Overall, the expert letters have not elaborated or discussed whether the Petitioner's findings have been implemented beyond informing the research of other scientists in the same field, and if so, the extent of their application. While the letters praise the Petitioner's research as original, valuable and promising, they have not sufficiently detailed in what ways his studies have already advanced the state of research in this field or elaborated on how the Petitioner's work has already impacted the wider field beyond the teams of researchers who have directly cited his articles. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.[4] On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.[5] Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

[4] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

[5] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9. *See also Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

In addition, the Petitioner maintains that his articles have collectively garnered 294 citations at the time of filing. As it relates to the citation of his work, the Director indicated that "the field in which [the Petitioner] works . . . shows many articles with many more citations than [the Petitioner's] articles, casting doubt on [his] claim that [his] articles have been a contribution of major significance in the field." The Petitioner submits his publication and citation record from Google Scholar and from the China National Knowledge Infrastructure (CNKI) China Integrated Knowledge Resources System, which provides comparable information for Chinese language publications that cite to his work.[6] The evidence from *Google Scholar* reflects that his four highest cited articles received 38 (*Journal of Applied Microbiology*), 27 (*Journal of Cancer Research and Clinical Oncology*), 12 (*American Journal of Physiology*) and 10 (*Circulation: Cardiovascular Genetics*) citations, respectively.[7] The documentation from CNKI indicates that two articles published in the *Journal of Agricultural Biotechnology* received 198 and 9 citations, respectively. But this evidence does not show that the impact of his work on the overall field of biomedical science or related fields rises to the level of an original contribution of major significance. Highly-cited publications alone are not sufficient under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of "major significance," as the number of citations for a given article often does not provide sufficient context to establish the impact or importance of a given researcher's work in the field. That context must be provided by other evidence in the record.

We acknowledge, however, that a petitioner may present evidence that his articles "have provoked widespread commentary or received notice from others working in the field, or entries (particularly a goodly number) in a citation index which cite [his] work as authoritative in the field, may be probative of the significance of [his] contributions to the field of endeavor."[8] In this case, the Petitioner has not provided evidence that would, for example, allow us to compare his citations for individual articles to other similarly, highly cited articles that the field views as having been of major significance. The Petitioner has demonstrated that his most cited English language article is '

published in 2001 in *Journal of Applied Microbiology*. While the Petitioner submitted corroborating evidence in the form of an expert opinion letter that briefly addresses his research in this area, that evidence, for the reasons already discussed, is not sufficient to establish that the Petitioner's research is regarded as an original contribution of major significance that has remarkably impacted or influenced his field.

Further, the record included published articles, including international articles, that cited to his work in support of his claim that other scientists have relied on his research. A review of those articles,

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[6] We note that evidence that summarizes citations to the Petitioner's entire body of published work, and claims that his overall citation rate is high, do not demonstrate that any specific work of his is so widely cited and relied upon that it is considered to have made a major impact in his field. In general, the comparison of the Petitioner's cumulative citations to others in the field is often more appropriate in determining whether the record shows sustained national or international acclaim and demonstrates that he is among the small percentage at the very top of the field of endeavor in a final merits determination if the Director determined he met at least three of the regulatory criteria. *See Kazarian* 596 F.3d at 1115.

[7] The Google Scholar list indicated that his remaining article published in *Cell Cycle* did not receive any citations. The Petitioner did not specify how many citations, if any, for each of his individual articles contained self-citations. Moreover, in response to the Director's request for evidence and on appeal, the Petitioner submits an updated *Google Scholar* list reflecting an increase of citations to his individual articles. The Petitioner did not demonstrate how many of the additional citations occurred in papers published prior to or at the time of initial filing. *See* 8 C.F.R. § 103.2(b)(1).

[8] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

though, does not show the significance of the Petitioner's research to the overall field beyond the authors who cited to his work.[9] For instance, the Petitioner provided an article titled [redacted] (*Cancer Letters*), in which the authors cite to the Petitioner's *Journal of Cancer Research and Clinical Oncology* article to support their statement that [redacted]."[10] However, the article does not distinguish or highlight the Petitioner's written work from the other 118 papers cited in the article. Moreover, the paper does not indicate that the Petitioner's article is authoritative or otherwise viewed as being majorly significant in the field. While it is likely that the Petitioner's published research has incrementally advanced the science in his field, which is reasonably expected of research deemed worthy of publication, his publication record does not establish how he has generated widespread commentary or acceptance and application of his findings, nor does the evidence establish that his published studies have advanced the field in a significant way. As a result, the Petitioner has not shown how his published original research has made an impact that rises to the level of "major significance" consistent with this regulatory criterion.

The Petitioner also provided rankings which appear on the website of *Scimago Journal & Country Rank* for several journals that have published his work and articles that cited to his work. The Petitioner asserts that the journal ranking of those journals sufficiently establish their impact. The impact of a given journal is not persuasive evidence of the impact of every article published in that journal. A publication that bears a high ranking or impact factor reflects the publication's overall citation rate; it does not show an author's influence or the impact of research on the field or that every article published in a highly ranked journal automatically indicates a contribution of major significance. Here, the Petitioner has not established that publication in a highly ranked journal alone demonstrates a contribution of major significance in the field. As stated above, the record does not contain evidence that the Petitioner's published articles have garnered widespread citations or other response in the academic field.

The Petitioner further emphasizes that his research was cited in several articles and press releases published in [redacted] 2015 on the websites of ScienceDaily, TechTimes, NaturalNews, DoctorsHealthPress, MedicineNews, UKExpress, and PharmacyLearningNetwork. Those articles, which do not mention the Petitioner, report on the recent publication of his *American Journal of Physiology* article, containing the findings of the [redacted] University research team regarding the risk o[redacted]s as a preventative measure against [redacted] disease given their [redacted] cell function. The Petitioner did not show that such limited media coverage indicates an original contribution of major significance in the field. For example, the evidence did not indicate that his research and findings resulted in widespread coverage and interest.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field. Considered together, the evidence consisting of the citations to the Petitioner's published findings, the citation statistics, and the reference letters from his colleagues and other experts, establishes that the Petitioner's

[9] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; *see also Visinscaia*, 4 F. Supp. 3d 126, 134-135 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

[10] Although we discuss a sample article, we have reviewed and considered each one.

published data and findings have been relied upon by others in their own research. It does not demonstrate that the Petitioner has made an original contribution of major significance in his field. Therefore, he has not met this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the Petitioner has reviewed manuscripts, conducted research, and authored scholarly articles, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.